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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,	
Plaintiff and Respondent,	E062964
v.	(Super.Ct.No. RIF1307042)
CHRISTOPHER ARIN ARREDONDO,	OPINION
Defendant and Appellant.	

APPEAL from the Superior Court of Riverside County. Jean P. Leonard, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed with directions.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Respondent.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, and Lynne G.

McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant Christopher Arin Arredondo fatally stabbed a man who was living in a van in his neighborhood. A jury convicted defendant of second degree murder with an enhancement for use of a deadly weapon. (Pen. Code, §§ 187, subd. (a); 1192.7, subd. (c); and 12022, subd. (b)(1).)[1] The court sentenced defendant to a prison term of 15 years to life, with a consecutive one-year term for the weapon enhancement and a consecutive one-year term for a prison prior.

The parties agree the oral pronouncement of sentence should be corrected, reducing the parole revocation fine to $300. The only issue defendant argues on appeal is there was insufficient evidence of malice to support the murder conviction. Defendant particularly objects to the admission of autopsy photographs used by the prosecutor to show malice. We reject defendant's contention. With one modification, we affirm the judgment.

II

STATEMENT OF THE CASE

Stephanie Ballew lived in Moreno Valley with her husband Anthony and her two children. Robert Kiddy was her next door neighbor. The victim, Joe Davila, lived in a

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[1] All statutory references are to the Penal Code unless stated otherwise.

van parked in Kiddy's driveway. Defendant lived across the street from Ballew and Kiddy.

On July 17, 2013, at around 10:30 a.m., Kiddy saw defendant and Davila talking but not arguing. Kiddy thought defendant and Davila were friends.

Later, at around 1:30 p.m., the Ballew family was watching television when they heard a loud bang at the back door. Davila staggered into the kitchen with a bloodied face and clutching his side. Davila pointed toward defendant's house and announced, "[t]hat mother fucker Chris stabbed me," before he collapsed.

When Jose Martinez returned home that day between noon and 1:30 p.m., he found defendant on his patio, looking for someone named "Johnny," and asking to charge his cell phone. Martinez told defendant to leave.

Ricardo Davila Jr., the victim's nephew, saw defendant running on the street that day, but was unsure of the time. Felicia Ross was driving her sister to work between 1:10 p.m. and 1:40 p.m. when she saw a Hispanic male, resembling defendant, running near the Ballew home, and "looking afraid, like scared."

A trail of blood was found, leading from the door of the van to the Ballew house. No blood or bloody clothing was found at defendant's house.

At around 11:25 p.m., a deputy saw defendant walking on the street and took him into custody. Defendant's shoes and shorts tested positive for blood; the DNA matched Davila's.

Davila suffered four stab and five incised wounds. A stab wound is deeper than it is longer and an incised wound is longer than it is deeper. Some other wounds may have been defensive. The injuries to Davila's hands could have been caused by him holding a sharp object. The cause of death was a stab wound that punctured the heart and lung. Death occurred in a manner of minutes.

III

MALICE

Defendant argues the conviction must be reversed because the prosecution did not meet its burden of proving to the jury beyond a reasonable doubt all of the elements of murder. (See *Sullivan v. Louisiana* (1993) 508 U.S. 275, 277-278; *People v. Sengpadychith* (2001) 26 Cal.4th 316, 324.) Particularly, defendant argues the prosecution did not present sufficient evidence to demonstrate malice. (*Jackson v. Virginia* (1979) 443 U.S. 307, 315.)

A. The Standard of Review

In reviewing a challenge based on the sufficiency of evidence, the Court of Appeal must "consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432; *People v. Hayes* (1990) 52 Cal.3d 577, 631.) "'Substantial evidence' means evidence which, when viewed in light of the entire record, is of solid probative value, maintains its credibility and inspires confidence that the ultimate fact it addresses has been justly determined." (*People v. Connor* (1983) 34 Cal.3d 141, 149.) The court's sole function is to determine if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia, supra*, 443 U.S. at p. 319; *People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The standard of review is the same in cases where the prosecution relies primarily on circumstantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People v. Stanley* (1995) 10 Cal.4th 764, 792.) The California Supreme Court has held, "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin, supra*, 18 Cal.4th at p. 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.) Speculation about a possible inference that would support a verdict is not substantial evidence. (*People v. Morris* (1988) 46 Cal.3d 1, 21; *People v. Brown* (1989) 216 Cal.App.3d 596, 600.)

B. Discussion

Murder is divided into first and second degree murder. (§ 189.) "Second degree murder is the unlawful killing of a human being with malice, but without the additional elements (i.e., willfulness, premeditation, and deliberation) that would support a conviction of first degree murder. (§§ 187, subd. (a), 189; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 102.)" (*People v. Hansen* (1994) 9 Cal.4th 300, 307.)

Section 188 defines malice. It is express "when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature." (§ 188.) It is implied "when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart." (*Ibid.*) This definition of implied malice is problematic: "The statutory definition of implied malice has never proved of much assistance in defining the concept in concrete terms." (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1217.) The Supreme Court has interpreted implied malice as having "both a physical and a mental component. The physical component is satisfied by the performance of 'an act, the natural consequences of which are dangerous to life.' (*People v. Watson* (1981) 30 Cal.3d 290, 300.) The mental component is the requirement that the defendant 'knows that his conduct endangers the life of another and . . . acts with a conscious disregard for life.' (*Ibid.*, internal quotation marks omitted.)" (*People v. Patterson* (1989) 49 Cal.3d 615, 626.) Malice cannot be presumed. (*Mullaney v. Wilbur* (1975) 421 U.S. 684, 703; *Sandstrom v. Montana* (1979) 442 U.S. 510, 520-524.)

The trial court refused to give instructions on a lesser included offense because no one witnessed the stabbing and there was no evidence to support that a lesser offense had occurred. Defendant maintains the trial court acknowledged there were no facts presented that would allow a jury to draw a reasonable inference of malice to support the murder conviction. Defendant contends that, although there is no dispute that Davila was stabbed to death, and the jury could reasonably infer from the evidence that defendant did the stabbing, the jury could not infer defendant acted with malice.

Defendant's argument fails for two reasons. First, the viciousness of the attack—in which defendant repeatedly wielded a deadly weapon and targeted the victim's vital organs—demonstrates evidence of an intent to kill. (*People v. Smith* (2005) 37 Cal.4th 733, 741; *People v. Bolden* (2002) 29 Cal.4th 515, 560-561; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1114-1115.)

Second, the introduction of three autopsy photographs demonstrating the extent of the victim's mortal injuries was relevant to show malice. The trial court admitted, over defense objection, several photographs in which a rod had been inserted through the victim's chest showing the trajectory of the stab wound. The prosecutor explained: "On a case like this where nobody saw what happened, I have to rely strictly on the physical evidence to prove the nature of the charge . . . and that's the nature of the stab wounds. . . . [¶] So it's really just difficult—almost impossible to go through all of these wounds and explain the significance, the grouping, the depth, the nature of their wounds without being able to look at them in their totality. . . . All that stuff is relevant to prove my case. And I need to go beyond the doctor's testimony to aid the jury in understanding it."

The California Supreme Court has held many times: "Autopsy photographs of a murder victim 'are always relevant at trial to prove how the crime occurred; the prosecution need not prove these details solely through witness testimony.' (*People v. Carey* (2007) 41 Cal.4th 109, 127.) In addition, '[s]uch photographs may . . . be relevant to prove that the killer acted with malice.' (*Ibid.*) . . . The prosecution . . . had to prove its case . . . and the photographs were relevant evidence. (*People v. Scott* (2011) 52

Cal.4th 452, 470-471; *People v. Wilson* (1992) 3 Cal.4th 926, 938.)" (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 471; *People v. Cage* (2015) 62 Cal.4th 256, 283-284.)

Defendant argues, as did the *Sattiewhite* defendant, that the subject photographs were graphic and gruesome and therefore the risk of undue prejudice from their admission substantially outweighed their probative value. (Evid. Code, § 352.) We have reviewed the photographs, and although they are disturbing and unpleasant, the trial court could reasonably conclude that the danger of undue prejudice from their admission did not substantially outweigh their probative value in establishing the circumstances of the murder. The trial court did not abuse its discretion. (*People v. Sattiewhite, supra*, 59 Cal.4th at p. 471; *People v. Cage, supra*, 62 Cal.4th at pp. 283-284; *People v. Valdez* (2012) 55 Cal.4th 82, 133.) Furthermore, "[b]ecause the trial court did not abuse its discretion in finding the photographs relevant and not unduly prejudicial, there was no violation of defendant's constitutional rights. (*People v. Riggs* (2008) 44 Cal.4th 248, 304.)" (*Sattiewhite,* at p. 472; *Cage,* at p. 284.)

Even if it was an abuse of discretion to admit the photographs, it was harmless. It is not reasonably probable that a result more favorable to defendant would have been reached in the absence of the evidentiary error. (*People v. Cole* (2004) 33 Cal.4th 1158, 1199; *People v. Watson* (1956) 46 Cal.2d 818, 837.) Defendant stabbed Davila deeply nine times, focusing on the vulnerable chest, heart, and lungs. Before dying, Davila identified defendant as his assailant. Davila's blood was found on defendant's clothing and shoes. Excluding the photographs would not reasonably have resulted in a different outcome.

IV

DISPOSITION

The court's minute order and the abstract of judgment show the correct parole revocation fine of $300. The parties agree the trial court erred in orally imposing a $300 restitution fine and a parole revocation fine in the amount of $4,480. The parole revocation fine must be the same amount as the restitution fine. (§ 1202.45.) Therefore the parole revocation fine must be reduced to $300. However, we order the trial court's oral pronouncement of judgment to be corrected to state the proper amount of $300 for the parole revocation fine. Subject to that modification, we affirm the judgment.

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CODRINGTON
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.